IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1383 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVJIBHAI NARANBHAI RAVNANI

Appearance:

1. Special Civil Application No. 1383 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/04/2005

C.A.V. JUDGEMENT

The present petition has been filed by the petitioner Gujarat State Road Transport Corporation under Article 226 of the Constitution of India challenging the

Award passed by the Labour Court, Bhavnagar in Reference (LCB) No.222 of 1998 dtd.31/5/2002, whereby the Labour Court directed the petitioner Corporation to pay 80% back wages to the respondent from the date of termination till his retirement, considering the service of the respondent as continuous, within 30 days from the date of the publication of the Award and also directed the petitioner Corporation to pay Rs.1000/- to the respondent towards costs.

2. It is the case of the petitioner Corporation that the respondent was working as Conductor under the petitioner. On 25/7/1976 when the respondent was on his duty on the ST Bus enrouted from Dwarka to Bhavnagar, the said bus was checked at Vasai by checking squad. While checking, it was found that three passengers of different group were travelling from Khambhalia to Jamnagar, from whom the respondent has collected total fare of Rs.12/and tickets were issued. The checking of the waybill of the respondent was made and it was found that tickets were not of the current trip but the tickets of earlier trips were re-issued to the said passengers by the respondent. Hence, a departmental inquiry was held against the respondent after following the principles of natural justice, wherein the misconduct of the was proved and hence the respondent was dismissed from service of the petitioner Corporation, against which the respondent had preferred the Reference, wherein, the Labour Court passed the Award in favour of the respondent, which is challenged in this petition.

3. Mr.Ashish Dagli, learned counsel for the petitioner Corporation has mainly argued that the impugned Award is illegal, arbitrary and not tenable at law; that the misconduct of the respondent is proved in the departmental inquiry which was held after following the principles of natural justice and hence, the labour court has erred in passing the impugned award and in exercising the power under sec.11(A) of the Industrial Disputes Act; that it is proved that the respondent had re-issued the tickets and the said tickets were already issued in past, with a view to make defalcation with the public money; that there are statements given by the passengers to the effect that the respondent had issued the tickets after collecting fare; that the Labour Court failed to consider the past record of the respondent. Consequently, it is argued that the impugned order may be quashed and set aside.

4. On the other hand, Mr.Rathod, learned counsel for the respondent workman has vehemently argued that the

Award passed by the Labour Court is just, legal and proper and the same has been passed considering the evidence on record and while passing the Award, no error has been committed by the Labour Court; that the Labour Court has passed the impugned Award well within its jurisdiction; that present petition has been filed under Article 227 of the Constitution of India and under Articles 226 and 227 this Court has limited jurisdiction as per the settled law and hence this court may not interfere with the impugned award, more particularly when the Award is in consonance with the evidence on record and no error is committed by the Labour Court while passing the impugned Award; that in the inquiry no proper opportunity was given to the respondent and the award is passed without hearing the respondent; that no opportunity was given to cross examine the passengers of the bus whose statements were recorded by the checking squad and no opportunity of defence was given to the respondent.

4.1. Mr.Rathod has further argued that in fact, though the respondent had given tickets to all the passengers, the passengers had shown the tickets which were issued earlier and the checking inspector has made the allegation of reissuing tickets without proper verification; that in the departmental inquiry, no opportunity of cross-examination was given to the respondent and the inquiry was concluded; that the inquiry officer has given finding against the material on record and no reason is given by the inquiry officer for proving the charge levelled against the respondent; that the Inquiry Officer has not considered the detailed defence of the respondent; that from the Way Bill and CWA, it is proved that the respondent has given tickets to 43 passengers, and as per the petitioner Corporation, there were 42 passengers, meaning thereby the respondent had given tickets to all the passengers, and therefore, there is no question of reissuing tickets by the respondent and hence the finding of the inquiry officer is contrary to the evidence and decision reported in AIR 1985 SC 1121; that the past record of the respondent was not produced before the Labour Court by the petitioner and therefore, the Labour Court has rightly considered that the past record of the respondent is not bad and award is passed considering that the alleged offence was first misconduct; the petitioner can not raise the contention, which is not raised before the Labour Court, for the first time before this Court in writ petition under Article 226 of the Constitution of India. The Labour Court, though quashed the dismissal order passed by the petitioner against the respondent, instead of full

back wages, has granted only 80% back wages though the petitioner had not produced any evidence to prove gainful employment by the respondent, which amounts to punishment and therefore, the impugned award is not required to be interfered with by this Court.

4.2. Mr.Rathod has further argued that the Labour Court, considering the evidence on record, come to the conclusion that the punishment of terminating the service of the respondent is harsh keeping in mind the misconduct alleged to have been committed by the respondent and hence the said finding of fact arrived at by the fact finding authority may not be disturbed in this writ petition.

4.3. Mr.Rathod has placed reliance on the decision reported in AIR 1999 SCW 1444 [2] AIR 2004 SCW 4221 AND [3] 2005 (8) GLH 248 and argued that considering all the aspects of the matter and scope of this Court under Article 226 and 227 of the Constitution of India, the petition may be rejected, as the impugned award is legal and there is no error.

4.4. Having heard the learned counsel for the respective parties, considering the evidence on record and decisions cited by the learned counsel for the respective parties, it is clear that the Labour court has considered all the records, inquiry papers, charge alleged against the respondent and various citations cited before it and has passed the impugned Award, which in my opinion is just, legal and proper and in consonance with the record. The Labour Court has passed the award well within its jurisdiction. From the impugned award, it is clear that the petitioner has not produced any past record of the respondent, on the record of the labour court and therefore, the petitioner cannot raise the contention that the Labour Court has not considered the past record of the respondent, and the same can not sustain. Considering the totality of the case, I am not inclined to interfere with the impugned Award.

5. Over and above, it is pertinent to note that the present petition has been filed under Article 226 of the Constitution of India Challenging the impugned Award passed by the Labour Court. The scope of this Court under Articles 226 and 227 of the Constitution of India has been limited as held in the case of Ouseph Mathai and others Vs. M.Abdul Khadir, reported in AIR 2002 SC 110. The power under the said Articles cast a duty upon the High Court to keep the inferior courts and tribunal within the limits of their authority and that they do not

cross the limits, ensuring the performance of the duties by such courts and tribunal in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party. Further, in Waryan Singh Vs. Amarnath (1954 SCR 565) the Apex Court has held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law has been reiterated in Nagendra Nath Bose v/s. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R.Tarta (AIR 1975 SC 1297) it has been held by the Apex Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert its into a Court of appeal when the legislature has not conferred a right of appeal. The Apex Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam (1986 (4) SCC 447) has held that it is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could not go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Article 226 and 227 of the Constitution of India to look into the fact in the absence of clear reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the findings are perverse and not based on any material evidence or it resulted in manifest justice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction.

6. Keeping in mind the above settled proposition of law, I am of the opinion that the impugned award is neither perverse nor based on no material and therefore, do not call for any interference by this Court in this writ petition.

7. In the peculiar facts and circumstances of the case, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

8. The petitioner is directed to comply with the Award.

(SHARAD D.DAVE,J.)

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